BORA LASKIN LAW LIBRARY
3 1761 10084152 7

CASES AND MATERIALS ON FAMILY LAW

EDITED BY
BERNARD GREEN

SEPTEMBER 1978

VOLUME II

LAW LIBRARY

The materials produced herein are intended for the sole use of law students at McGill and Toronto.

CASES AND MATERIALS ON FAMILY LAW

EDITED BY

BERNARD GREEN

SEPTEMBER 1978

VOLUME II

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/casesmaterialson02gree_6

TABLE OF CONTENTS

GENERAL

		Page
CHAPTER ONE:	INTRODUCTION	2
I	The Constitutional Framework	2
II	The Legislative Framework	2
III	The Institutional Framework	2
	A. The Courts	2
	B. Other Agencies	2
	C. The Lawyer	2
IV	Some Views on Marriage	13
CHAPTER TWO:	FORMATION OF THE FAMILY UNIT AND ANNULMENT	30
I	Introduction	30
II	The Constitutional Issue	31
III	The Statutory Conditions	35
	A. License and Formalities	35
	B. Effect of Failure to Comply with Statutory Conditions	38
	C. Age and Parental Consent	45
IV	The Conditions Imposed By The Common Law	49
	A. Introduction	49
	B. A Man and a Woman	49
	C. ... Who are Free to Marry	57
	D. ... Who Consent to Marry Each Other	59
	E. ... And Who Are Able to Consummate the Marriage	85
V	Defences To A Nullity Action	97
	A. Knowledge	97
	B. Conduct	102
	C. Delay and Improper Motive	110
	D. The Effect of Petitioner's Own Impotence	115
VI	The Nullity Decree	119
	A. Jurisdiction And Other Matters	119
	B. Conflicts Problems	120
	C. Economic Consequences	120
	D. Children	120

		Page
VII	Reform: The English Approach	121
CHAPTER THREE:	DIVORCE	129
I	Grounds	129
	A. General	129
	B. Immediate Relief: The Fault Grounds	131
	C. Delayed Relief: Marital Breakdown	199
	D. Proposals For Reform	244
II	Bars and Defences	249
	A. The Possibility of Reconciliation	249
	B. Absolute Bars Applicable To All Grounds	255
	C. Discretionary Bars	266
	D. Special Bars Applicable Only To s. 4 Grounds	312
	E. The Problem Of Insanity	317
III	Nature And Consequences Of Divorce	319
	A. Jurisdiction	319
	B. Recognition	324
	C. Consequences	330
CHAPTER FOUR:	ECONOMIC RELATIONS BETWEEN "SPOUSES"	332
I	Introduction	332
II	Ownership Of Property	333
	A. Introduction	333
	B. The Law Prior to the F.L.R. Act	349
	C. The F.L.R. Act	386
III	Mutual Duty of Maintenance	410
	A. While Married	410
	B. On Dissolution of Marriage	422
	C. Special Problems: Contracting Out, Welfare and Problems of Federalism	485
CHAPTER FIVE:	CHILDREN	502
I	Introduction	502
II	Proving And Disproving Parenthood	504
III	Custody	510
	A. Private Disputes	510
	B. Disputes Involving The State Or A Coercive Agency..	635
	C. Custody And Guardianship After Death Of Natural Guardian	690

Page

IV Access 692

V Adoption 698

A. The Statutory Scheme 698

B. Consent Of Natural Parents 705

C. The Religious Factor 716

D. Access 721

VI The Parent-Child Relationship 723

A. Parental Control 723

B. Economic Relations 728

CHAPTER SIX: PROTECTION OF THE FAMILY UNIT AGAINST INTERFERENCE BY THIRD PARTIES 754

I Between Husband And Wife 754

A. Intentional Interference 754

II Between Parent And Child 770

APPENDIX OF STATUTES

VOLUME II

	Page
III Mutual Duty of Maintenance	410
A. While Married	410
(1) The law prior to the F.L.R. Act of 1978	410
Family Law Reform Act, 1978	410
(2) The F.L.R. Act of 1978	411
Criminal Code	417
(3) The special problems of possessory rights in the matrimonial home	417
Family Law Reform Act, 1978	417
The Partition Act	421
B. On Dissolution of Marriage	422
(1) By law	422
(a) Nullity	422
(b) Divorce	422
The Divorce Act	422
Law Reform Commission of Canada	423
Zacks	428
Van Zyderveld	433
(c) Forms of relief	437
(i) Secured order	437
Family Law Reform Act	437
Divorce Act	437
(ii) Lump sum	437
Family Law Reform Act	437
Divorce Act	438
K. v. K.	438
Murdoch	441
Saffran	446
Feldman	447
Ceicko	448
Brett	450
(iii) Periodic payments	452
Family Law Reform Act	452
Divorce Act	452
Sharp	453
Davis	455
Williams	458
West	460
Silverstein	461
(iv) Right of the husband to maintenance	464
Family Law Reform Act	464
Divorce Act	464
Cohen	464
(v) Variation of awards	466
Family Law Reform Act	466
Divorce Act	466
Johnstone	467

		Page
	McQuilkin v. Dawson	469
	Kinghorn	471
	Neal	473
	Jancou	475
(2)	On death of the parties	478
	Succession Law Reform Act	478
C.	Special Problems: Contracting Out, Welfare and Problems of Federalism	485
(1)	Contracting out of maintenance	485
	(a) While parties are alive	485
	(i) During cohabitation or upon separation	485
	Family Law Reform Act, 1978	485
	(ii) Where marital status is terminated by divorce	486
	(b) Contracting out of claims against a spouse's estate	486
	Family Law Reform Act	486
	Succession Law Reform Act	486
(2)	Welfare	487
	General Welfare Assistance Act	487
	Annual Report, Ministry of Community and Social Services	489
	Family Benefits Act	490
	Annual Report, Ministry of Community and Social Services	493
	Your Family Benefits Handbook (1975)	495
	Diamond, Philosophy of Welfare	497
(3)	Problems of federalism	501
	Law Society of Upper Canada	501
CHAPTER FIVE:	CHILDREN	502
I	Introduction	502
	Children's Law Reform Act	502
	Family Law Reform Act, 1978	503
	Succession Law Reform Act, 1976	504
II	Proving and Disproving Parenthood	504
	Children's Law Reform Act	504
	F. v. F.	506
	People of California v. Sorensen	508
III	Custody	510
A.	Private Disputes	510
(1)	The legislative framework	510
	The Infants Act	510
	Habeas Corpus Act	511
	Family Law Reform Act, 1978	512
	Divorce Act	514
	The Matrimonial Causes Act	515